

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Maritime Communications/Land Mobile LLC) DA 10-556
and Southern California Regional Rail) WT Docket No. 10-83
Authority Applications to Modify License and) File Nos. 0004153701, 0004144435
Assign Spectrum for Positive Train Control) Call Sign: WQGF318
Use, and Request Part 80 Waivers) File No. 0002303355
Relating to a License Granted Per an Auction)
No. 61 Form 601 Application)

To: Office of the Secretary

Attn: Wireless Telecommunications Bureau

Reply to Oppositions¹

Havens, ENL and Skybridge (or “SSF”) (together, for purposes of this Reply, “Petitioners”) hereby reply to the Maritime Communications/Land Mobile LLC (“MCLM”) and Southern California Regional Rail Authority (“SCRRA”) oppositions (the “MCLM Opposition”, the “SCRRA Opposition”, together the “Oppositions”) to their and their affiliates’ Petition of the Applications (a Modification and an Assignment) and the associated request for Waivers (the “Petition”).

(i) Summary and Preliminary Matters

The Oppositions failed to squarely address and accurately reflect the actual facts and law presented in the Petition which demonstrate that the Applications must either be summarily dismissed or denied or at minimum that the Petition must be granted and a formal hearing held under Sections 309(d) and (e) of the Communications Act. Indeed, the FCC is already undergoing a formal investigation or hearing under Section 308 of the Communications Act (Sec. 308) of MCLM and its real controlling interest, its affiliates—and of the Call Sign captioned above subject of the Applications (the “License”).

¹ The defined terms used herein having the same meaning they had in the Petition.

While information on PTC is suggested by MCLM and SCRRA to be relevant to grant of the Application, it is not—except since both MCLM and SCRRA lack candor in asserting PTC is something it is not and that is presents a special case for the FCC to ignore the evidence and law in the Petition as to why the Applications must be rejected. For that reason, we discuss PTC further herein.

Other Reply Filed Today

Havens, ENL and SSF agree with and reference and incorporate herein fully the Reply filed today by Verde Systems LLC and others (the “Other Reply”). The entities filing this other Reply are, as the FCC has previously found, each independent entities of each other, and in relation to Havens, ENL and SSF. Each entity has a right to file an independent Reply or to join in a Reply with one or more others of said entities.

Reply Comments in WT Docket No. 10-83

This Reply refers to and incorporates in full their Reply Comments in Docket 10-83 (the “Docket”)) (“Reply Comments”): those were filed on the same day that the Oppositions were filed, however, those Reply Comments are all relevant to Petitioners reply to the Oppositions. Rather than rewrite those in the text of this Reply, it is more efficient for FCC staff to review them only once (including to not have to search for changes to the initial version—as Reply Comments).

Reply Structure and Sham Entity

This Reply supports the various component facts and arguments, in the listed sections, of the PD. However, it focuses on certain items listed herein and for that uses a different section structure. This focus supplements and does not replace any of the PD componenets.

As shown in the Petition, there is no valid MCLM legal entity. It is a sham. Thus, herein, we use the name of the actual person in control of that entity, Donald Depriest with his wife Sandra Depriest, who is a figurehead only: together, “Depriest.”

Exhibits

Exhibits hereto are separately uploaded on ULS. They support the assertions and arguments in this Reply. They will also be filed with ex parte further comments in the Docket along with additional related materials, and various explanatory notes and highlights. They will also be filed with ex parte further comments in the Docket along with additional related materials, and various explanatory notes and highlights.

SCRAA FOIA Request: Lack of Full Response And Other Matters Further Reply Warranted

See the Reply Comments and Petition. SCRRRA only partly responded to Petitioners California FOIA (public access) law request for records related to the Applications and dealings with MCLM and related matters. SCRRRA is late in a full response and has not given good cause therefore. Once SCRRRA gives a full response (today they wrote to Petitioners that they will later do so), Petitioners expect to have good case to request leave to supplement their pleadings in this restricted proceeding, and in the public Docket as well. Also, Petitioners have pending a FOIA request before the Federal Railroad Authority (FRA) as to SCRRRA and MCLM, the SCRAA plan for PTC filed this past month with FRA, the BNSF and Amtrak PTC plans also filed at the same time with FRA and other materials. These also are directly related to the assertions of special need by MCLM and SCRRRA in this case. Since they fail to cite from these official plans, and since the FRA itself and the Congressional Act (the Rail Safety Improvement Act of 2008) impose no requirement—as MCLM and SCRRRA assert to the FCC—that PTC must have AMTS and a whole block of it, and must break a half dozen AMTS rules, etc.--- they lack candor , withhold essential information for their own arguments, and are delaying this proceeding.

I. Sole threshold matters: The License is Defective and Lawful.

(1) The Assignor MCLM clearly is a sham legal entity and its real controller, Donald Depriest together with his wife Sandra Depriest (“Depriest” – see above) lack the required character and fitness to hold any FCC license and take any licensing application.

The Oppositions are incorrect as a matter of law that the FCC cannot and does not have jurisdiction to consider and rule in evidence of sham entities created or maintained to evade FCC rules and policies: there are dozens of cases that are published and well known (in addition to the precedent cited in the Petition). See Exhibits hereto for further example.

The Oppositions are also incorrect that the matters of the character and fitness of Depriest, and the matters of the FCC Investigations (under Sections 308 and 309 of the Act, as described in the Petition) are not relevant: they are indeed relevant to not only MCLM as a disqualified license holder, but to the invalidity of the License itself and why it must be rescinded or revoked, and the Applications thus denied or dismissed. The Petition cited the FCC Character policy decisions and other law as to these matters, which the Oppositions did not refute. See also the Other Reply on this topic.

As noted above, the FCC has already effectively but in the most clear terms granted Petitioners petitions to deny and for reconsideration of the License’s long form from Auction 61 and associated matters, and the FCC has already commenced a formal investigation (or “hearing”) but at this stage, the FCC is engaged in that only under its Section 308 investigation.

For the Oppositions to evade this fact and the related law cited in the Petition, clearly demonstrates that MCLM has no defense of this central issue, and that SRCAA understands it is engaged in illegal laundering and lacks candor. PTC—whether real or not, reasons asserted for the waivers, and other issues in the Oppositions (and in others’ Comments and Reply Comments in the Docket are side issues to those under Section 309(d) of the Communications Act—which the Oppositions evaded and misconstrued.

(2) Even if item ‘(1)’ is not considered, the License is invalid since DEPRIEST was fully disqualified in Auction 61 if and when the FCC or a court applies the FCC’s own rules and controlling FCC and court precedent. A defective license cannot be “laundered” by assignment: DEPRIEST’s Mobex division attempted that in the past and the FCC denied the attempt (cited below). See FCC precedent in the Exhibits: FCC found Mobex cannot launder fatal defects in an AMTS license by assignment. The License is clearly defective and cannot be sure by assignment to SCRRA no matter what its asserted special cause it.

II. Defects in the Applications

(3) The Assignee also lacks candor as indicated in the PD and further shown below. It is not seeking AMTS spectrum for its PTC, nor does it have a viable PTC program at this time (see Exhibits hereto, and Reply Comments), indeed, another railroad-- BNSF-- is pursuing PTC on its behalf (see Exhibit on this issue): that appears to be the or one of the reasons for the Application. The public interest in an Application must be demonstrated especially one as this where the attempt is wholesale “repurposing” and change in the nature of the radio service: that cannot be shown where there is lack of candor, as is clear in this case. See the Reply Comments

(4) The asserted need for the Application included integrated waivers is false, and the there is no technical showing nor can there be PTC does not require any particular spectrum— not the PTC that DEPRIEST and SCRAA (and its supporting Commenters) would have the FCC believe: they suggest to the FCC that PTC is here and now, that it is a decided technology and implementation program under law, and the like. None of that is true, as further shown below. If there were ever in the case of FCC wireless regulation a case where a particular spectrum band is not required it is this case of PTC for reasons given below. But if it is required, then it is subject to a demonstration that would have existed by not at Federal and State levels, and that has not taken place. Indeed, no regulatory body has accepted the suggestions of DEPRIEST and its spectrum marketer Spectrum Bridge to adopt AMTS.

(5) SCRAA rejects any 217-222 MHz but MCLM's at high cost: its asserted due diligence and sole-solution of the MCLC spectrum is manifestly false and fraudulent: a collaboration of SRCAA, Spectrum Bridge, Robert Gurss, and DEPRIEST and Donald Depriest to have State and Federal funds used for unjust illegal private enrichment.

(6) The FCC has considered and denied similar waiver requests from US railroads that asserted special consideration not justified under Section 1.925, and it should do so here. See the Exhibits.

(7) The FCC has considered and granted in part and denied in part waiver requests by actual public safety agencies to use public coast spectrum: the standards applied in those cases, applied to the Applications, require denial. See the Exhibits.

(8) PTC using cost-effective advanced TETRA is successful in Europe, Asia, South America—but US railroads including BNSF which, itself states, is the real entity behind the SCRAA PTC program, refuse to consider this proven solution. See Exhibits.

III. The Application is covert, shallow attempt at “Repurposing”
spectrum already dedicated to safety-of-life maritime, and compatible land,
service for advanced, safe, efficient, intelligent transportation.

(9) After decades of asserting that AMTS must be kept primarily for safety-of-life maritime public coast services, and asserting it was in fact providing those along all US coastlines and the major inland waterways, MLMC now summarily rejects all that, proposes to kill off its (falsely asserted) maritime public coast services, and

IV. The Applications Fail Under the Purpose of the
Communications Act As Discussed by the US Supreme Court

(10) The FCC² cites the US Supreme Court as follows, from *National Broadcasting Co. v. United States*, 319 U.S. 190, 227 (1943) (underlining added)

² See <http://www.fcc.gov/mb/audio/lowpwr.html>

It was this fact, and the chaos which resulted from permitting anyone to use any frequency at whatever power level he wished, which made necessary the enactment of the Radio Act of 1927 and the Communications Act of 1934. *National Broadcasting Co. v. United States*, 319 U.S. 190, 210 - 214 (1943). It was this reality which at the very least necessitated first the division of the radio spectrum into portions reserved respectively for public broadcasting and for other important radio uses such as amateur operation, aircraft, police, defense, and navigation; and then the subdivision of each portion, and assignment of specific frequencies to individual users or groups of users. Beyond this, however, because the frequencies reserved for public broadcasting were limited in number, it was essential for the Government to tell some applicants that they could not broadcast at all because there was room for only a few.

Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish. If 100 persons want to broadcast but there are only 10 frequencies to allocate, all of them may have the same 'right' to be a licensee; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licensees to broadcast and by limiting the number of licensees so as not to overcrowd the spectrum.

This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. [citation omitted here]. No one has a first amendment right to a license or to monopolize a radio frequency; to deny a station license because 'the public interest' requires it 'is not a denial of free speech.' *National Broadcasting Co. v. United States*, 319 U.S. 190, 227 (1943).

The FCC was created in large part to regulate the airwaves so that there would not be interference and thus prevent radio communications. Even the First Amendment—which the above case is concerning-- is not sufficient to break that purpose. No bald assertion of PTC's need for AMTS and solely AMTS and fully all of an AMTS block is sufficient to demand that the FCC grant a station license and ignore the fundamental requirements of licensing: (i) to be sure that the license being assigned is legitimate and not defective and being laundered, (ii) that the assignor is qualified and not engaged in illegal laundering and unjust enrichment, (ii) the assignee is candidly explaining its purposes and is not laundering, and (iv) that the technical requirements of the application—if not under current rules—do not cause interference to other

radio users who are willing to abide by the rules, etc. The Applications fail under these criteria and the noted foundational purpose of the FCC. This is show in the component facts and arguments in the Petition, this Reply and the Other Reply.

[Execution on next page.]

Respectfully,

Environmental LLC, by

[Filed electronically. Signature on file.]

Warren Havens

President

Skybridge Spectrum Foundation, by

[Filed electronically. Signature on file.]

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President

Warren Havens, an Individual

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Declaration

I, Warren Havens, as President of Petitioners, hereby declare under penalty of perjury that the foregoing Reply, including all attachments and exhibits, was prepared pursuant to my direction and control and that all the factual statements and representations contained herein are true and correct.

/s/ Warren Havens
[Submitted Electronically. Signature on File.]

Warren Havens

May 17, 2010

Exhibits

These are separately filed in ULS.

Certificate of Service

I, Warren C. Havens, certify that I have, on this 17th day of May 2010, caused to be served, by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing Reply, including all exhibits and attachments, unless otherwise noted, to the following:³

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³ The mailed copy being placed into a USPS drop-box today may not be processed by the USPS until the next business day.

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